

§ 301.7609-4 Right to intervene; right to institute a proceeding to quash.

(a) *Intervention in proceeding with respect to enforcement of a summons.* Under section 7609(b)(1), a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 is entitled to intervene in any proceeding brought under section 7604 with respect to the enforcement of that summons.

(b) *Right to institute a proceeding to quash—(1) In general.* Under section 7609(b), a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 may institute a proceeding to quash the summons in the United States district court for the district in which the summoned person resides or is found.

(2) *Requirements for a proceeding to quash.* To institute a proceeding to quash a summons, a person entitled to notice of the summons must, not later than the 20th day following the day the notice of the summons was served on or mailed to such person—

(i) File a petition to quash a summons in the name of the person entitled to notice of the summons in the proper district court;

(ii) Notify the Internal Revenue Service (IRS) by sending a copy of that petition to quash by registered or certified mail to the IRS employee and office designated in the notice of summons to receive the copy; and

(iii) Notify the summoned person by sending by registered or certified mail a copy of the petition to quash to the summoned person.

(3) *Failure to give timely notice.* If a person entitled to notice of the summons fails to give proper and timely notice to either the summoned person or the IRS in the manner described in this paragraph, that person has failed to institute a proceeding to quash and the district court lacks jurisdiction to hear the proceeding. For example, if the person entitled to notice mails a copy of the petition to the summoned person, but fails to mail a copy of the petition to the designated IRS employee and office, the person entitled to notice has failed to institute a proceeding to quash. Similarly, if the person entitled to notice mails a copy of such petition to the summoned person but, instead of sending a copy of the

petition by registered or certified mail to the designated IRS employee and office, the person entitled to notice provides the designated IRS employee and office the petition by some other means, the person entitled to notice has failed to institute a proceeding to quash.

(4) *Failure to institute a proceeding to quash.* If a person entitled to notice fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such person, the IRS may examine the summoned records and take summoned testimony following the 23rd day after notice of the summons was served on or mailed to the person entitled to notice.

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a person entitled to notice to institute a proceeding to quash by filing a petition in district court and notifying both the IRS and the summoned person. Unless the person entitled to notice has notified both the IRS and the summoned person in the appropriate manner, the person entitled to notice has failed to institute a proceeding to quash. For the purpose of permitting the IRS to examine the summoned witnesses and records, it is presumed that the notification was not timely mailed if the copy of the petition was not delivered to the summoned person or to the person and office designated to receive the notice on behalf of the IRS within three days after the close of the 20-day period allowed for instituting a proceeding to quash.

(d) *Effective/applicability date.* This section is applicable on April 30, 2008.

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§ 301.7609-5 Suspension of periods of limitations.

(a) *In general.* Except in the case of a summons that is a designated or related summons described in section 6503(j), the following rules relating to the suspension of certain periods of limitations apply to all third-party summonses subject to the notice requirements of section 7609(a) and to all John Doe summonses subject to the requirements of section 7609(f).

(b) *Intervention in an action to enforce the summons—(1) In general.* If a person

entitled to notice of a summons under section 7609(a) and § 301.7609-2 with respect to whose liability the summons was issued, or such person's agent, nominee, or other person acting under the direction or control of the person entitled to notice, takes any action to intervene in a proceeding with respect to enforcement of such summons brought pursuant to section 7604, that person's periods of limitations under sections 6501 (relating to assessment and collection) and 6531 (relating to criminal prosecutions) for the tax period or periods that are the subject of the summons are suspended for the period during which such proceeding is pending.

(2) *Action to intervene.* A person entitled to notice takes any action to intervene in a proceeding to enforce a summons within the meaning of § 301.7609-4(a) on the date when a motion to intervene is filed with the court.

(c) *Institution of a proceeding to quash a summons—(1) In general.* If a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 with respect to whose liability the summons was issued, or such person's agent, nominee, or other person acting under the direction or control of such person, takes any action described in § 301.7609-4(b) to institute a proceeding to quash such summons, that person's periods of limitations under sections 6501 and 6531 for the tax period or periods that are the subject of the summons are suspended for the period during which such proceeding is pending.

(2) *Action to institute a proceeding to quash a summons.* A person entitled to notice takes any action to institute a proceeding to quash if he or she files a petition to quash the summons in any district court, regardless of whether the timely filing requirements of section 7609(b)(2)(A) or the notice requirements of section 7609(b)(2)(B) are satisfied. For example, a person entitled to notice takes an action to institute a proceeding to quash a summons for purposes of this section if that person files a petition to quash the summons in district court and notifies the summoned person by sending a copy of the petition by registered or certified mail, but fails to mail a copy of that notice

to the appropriate Internal Revenue Service (IRS) person and office.

(d) *Summoned party's failure to finally resolve the response to a summons after six months from service—(1) In general.* If a third party's response to a summons for which the IRS was required to provide notice to persons identified in the summons, or to a John Doe summons described in section 7609(f), is not finally resolved within six months after the date of service of the summons, the periods of limitations are suspended under sections 6501 and 6531, for the person with respect to whose liability the summons was issued and for any person whose identity is sought to be obtained by a John Doe summons, for the tax period or periods that are the subject of the summons. The suspension shall begin on the date which is six months after the service of the summons and shall end on the date on which there is a final resolution of the summoned party's response to the summons.

(2) *Example.* The rules of paragraph (d)(1) of this section are illustrated by the following example:

A John Doe summons is issued on April 1, 2004, to the promoter of a tax shelter and seeks the names of all participants in the shelter in order to investigate the participants' income tax liabilities for 2001 and 2002. The district court approves service of the summons on April 30, 2004, and the summons is served on the promoter on May 3, 2004. The promoter does not provide the names of the participants. The periods of limitations for the participants' income tax liabilities and criminal prosecution for 2001 and 2002 are suspended under section 7609(e)(2) beginning on November 3, 2004, the date which is six months after the date the John Doe summons was served until the date on which the promoter's response to the summons is finally resolved.

(e) *Definitions—(1) Agent, nominee, etc.* A person is the agent, nominee, or other person of a person entitled to notice under section 7609(a) and § 301.7609-2, and is acting under the direction or control of the person entitled to notice for purposes of section 7609(e)(1), if the person entitled to notice has the ability in fact or at law to cause the agent, nominee or other person, to take the actions permitted under section 7609(b).

(2) *Period during which a proceeding is pending*—(i) *Intervention in an enforcement proceeding.* The period during which the periods of limitations under sections 6501 and 6531 are suspended under section 7609(e)(1) begins on the date any person described in paragraph (b) of this section intervenes in an action to enforce the summons. The periods of limitations remain suspended until all appeals are disposed of, or until the expiration of the period during which an appeal may be taken or a request for further review may be made. The periods of limitations remain suspended for the period during which a proceeding is pending, regardless of compliance (or partial compliance) with the summons during that period. If, following issuance of an order to enforce a third-party summons, a collateral proceeding is brought challenging whether production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to satisfy that order, the periods of limitations remain suspended until all appeals of the collateral proceeding are disposed of, or until the expiration of the period during which an appeal may be taken or a request for further review of the collateral proceeding may be made. Any collateral proceeding to the original proceeding shall be considered to be a continuation of the original proceeding.

(ii) *Proceeding to quash a summons.* The period during which the periods of limitations under sections 6501 and 6531 are suspended under section 7609(e)(1) begins on the date any person described in paragraph (c) of this section files a petition to quash the summons in district court. The periods of limitations remain suspended until all appeals are disposed of, or until expiration of the period in which an appeal may be taken or a request for further review may be made. The periods of limitations remain suspended for the period during which a proceeding is pending, regardless of compliance (or partial compliance) with the summons during that period.

(iii) *Examples.* The rules of paragraph (e)(2) are illustrated by the following examples:

Example 1. A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 2002. The summons is served on A on March 1, 2004. B files a petition to quash the summons in district court on March 15, 2004. The district court dismisses B's petition on July 1, 2004. B fails to appeal this decision by filing a notice of appeal within 60 days from the date of the district court's order of dismissal. The revenue agent notifies A that B did not appeal the district court's order. A turns over all of the records requested in the summons. The periods of limitations applicable to B for 2002 under sections 6501 and 6531 are suspended under section 7609(e)(1) from March 15, 2004, the date B filed a petition to quash, until August 30, 2004, the last day on which B could have filed a notice of appeal.

Example 2. A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 2003. The summons is served on A on June 1, 2005. B files an untimely petition to quash the summons in district court on June 29, 2005. The district court dismisses B's petition on July 29, 2005. B does not file an appeal of the district court's order. The periods of limitations applicable to B for 2003 under sections 6501 and 6531 are suspended under section 7609(e)(1) from June 29, 2005, the date B filed an untimely petition to quash, until September 27, 2005, the last day on which B could have filed a notice of appeal.

(3) *Final resolution of the summoned third party's response to a summons.* For purposes of section 7609(e)(2)(B), final resolution with respect to a summoned party's response to a third-party summons occurs when the summons or any order enforcing any part of the summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions

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should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the summons or any order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(f) *Effective/applicability date.* This section is applicable on April 30, 2008.

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§ 301.7610-1 Fees and costs for witnesses.

(a) *Introduction.* Section 7610 provides that the Internal Revenue Service may make payments to certain persons who are asked to give information to the Service. Under section 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in section 7610 and definitions of other terms used in the regulations under section 7610(a)(b); and paragraphs (c) and (d) contain rules and rates applicable to payments under section 7610. Section 7610 and its regulations are effective for summonses issued after February 28, 1977, except as otherwise provided.

(b) *Definitions*—(1) Directly incurred costs. Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making cop-

ies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total-cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not includible in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments*—

(1) *Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for these costs that are both directly incurred and reasonably necessary. Search, reproduction, and transportation costs must be considered separately in determining whether costs are reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an